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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/788,177 | 02/16/2001 | John David Tucker | KCC-16,190 | 5302 |

7590 02/19/2003

Melanie I. Rauch
Pauley Petersen Kinne & Fejer
Suite 365
2800 W. Higgins Road
Hoffman Estates, IL 60195

EXAMINER

COLE, ELIZABETH M

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1771

DATE MAILED: 02/19/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/788,177

Applicant(s)

TUCKER ET AL.

Examiner

Elizabeth M Cole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2,4-9, 11-13, 16-21, 23-26, 29-33, 35-40, 42-45 are rejected under 35

U.S.C. 102(b) as being anticipated by WO 98/44025 to Stopper et al.

Stopper et al discloses a biodegradable stretch-thinned film comprising a first olefin polymer, a filler such as calcium carbonate and an additional polymeric material. The olefin polymer should be present in an amount of at least 50%. The additional polymer material may comprise styrene, nylon and polyester. The olefin polymer may comprise polyethylene, particularly linear low density polyethylene, polypropylene and a blend of polyethylene and polypropylene. See pages 7-8. Therefore, the olefin polymer, particularly polyethylene and linear low density polyethylene corresponds to the matrix polymer. The additional polymer and/or the blending of polypropylene with the polyethylene corresponds to the incompatible polymer. The filler material may be present in an amount of 40-70 percent by weight. See page 9, lines 1-2. The stretch-thinned film may be bonded to additional layers which would correspond to the claimed skin layers. See page 11. The stretch-thinned film may also be bonded to nonwoven fabrics, such as spunbonded, meltblown and staple fiber fabrics. The stretch-thinned film may be incorporated into personal care products such as absorbent articles.

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3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over

WO 98/44025 to Stopper et al in view of Burns, Jr et al, U.S. Patent No. 6,328,723. Stopper et al discloses the claimed invention as set forth above. Stopper et al differs from the claimed invention because Stopper does not teach employing ultra low density polyethylene as the matrix polymer. Burns, Jr. et al teaches at col. 6, lines 35-50 that ultra low density polyethylene is known to be equivalent to the polymeric materials set forth in Burns for the purpose of making filled, stretch-thinned breathable films. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed ultra low density polyethylene. One of ordinary skill in the art would have been motivated to employ ultra low density polyethylene because of the teaching of Burn, Jr. that ultra low density polyethylene is equivalent to the polymers set forth in Stopper et al. With regard to the limitation of employing waste polymeric materials as the incompatible polymer in the blend, it would have been obvious to have used such waste polymers motivated by the expectation that waste polymers are readily available, are less expensive and their use is environmentally friendly. With regard to the relative proportions of the incompatible polymer and the matrix polymer, Stopper et al teaches employing at least 50% of the matrix polymer. It would have been obvious to one of ordinary skill in the

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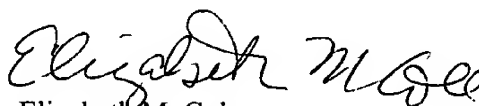
at the time the invention was made to have optimized the relative proportions of the matrix polymer and the incompatible polymer through the process of routine experimentation in order to produce a film having the desired properties that the incompatible polymer would provide to the film.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (703) 308-0037. The examiner may be reached between 6:30 AM and 5:00 PM Monday through Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (703) 308-2414.

Inquiries of a general nature may be directed to the Group Receptionist whose telephone number is (703) 308-0661.

The fax number for official faxes is (703) 872-9310. The fax number for official after final faxes is (703) 872-9311. The fax number for unofficial faxes is (703) 305-5436.



Elizabeth M. Cole
Primary Examiner
Art Unit 1771

e.m.c
February 6, 2003